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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 IRVING LEONARD JOHNSON,) No. CV 11-03249-SVW (VBK)
12)
13 Petitioner,) ORDER SUMMARILY DISMISSING
14)
15 v.) PETITION FOR LACK OF SUBJECT
16)
17 R. K. WONG,)
18)
19 Respondent.)
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17 On April 15, 2011, Irving Leonard Johnson (hereinafter referred
18 to as "Petitioner") filed a "Petition for Writ of Habeas Corpus"¹
19 ("Petition"). Petitioner was convicted of "robbery and a 35-year-old
20 murder" in Case No. VA044462 on September 1, 1999 in the Norwalk
21 Superior Court. Petitioner was sentenced to prison for 25 years. (See
22 Petition at 2.) It appears that Petitioner contends that his Sixth
23 Amendment rights were violated in that his prior convictions were not
24 found beyond a reasonable doubt by a jury; rather, they were
25 determined by a Judge.

26 It appears from the face of the Petition that it is directed to
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¹ Petitioner has filed his Petition on a state habeas form rather than the habeas form utilized by the United States District Court, Central District of California. See Local Rule 83-16.1.

1 the same Los Angeles County Superior Court conviction as a prior
2 habeas petition filed by Petitioner in this Court on May 22, 2001, in
3 Case No. CV 01-04571-SVW (VBK).² On September 30, 2003, Judgment was
4 entered in Case No. CV 01-04571-SVW (VBK) denying the petition and
5 dismissing the action with prejudice, pursuant to the District Judge's
6 Order approving and adopting the Magistrate Judge's Report and
7 Recommendation.

8 The Petition now pending is governed by the provisions of the
9 Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-
10 132, 110 Stat. 1214)("the Act"), which became effective April 24,
11 1996. Section 106 of the Act amended 28 U.S.C. § 2244(b) to read, in
12 pertinent part, as follows:

13 "(1) A claim presented in a second or successive habeas
14 corpus application under section 2254 that was presented in a
15 prior application shall be dismissed unless--

16 (A) the applicant shows that the claim relies on a new
17 rule of constitutional law, made retroactive to cases on
18 collateral review by the Supreme Court, that was previously
19 unavailable; or

20 (B)(i) the factual predicate for the claim could not
21 have been discovered previously through the exercise of due
22 diligence; and

23 (ii) the facts underlying the claim, if proven and
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25 ² The Court takes judicial notice of its own files and records.
26 See Mir v Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).
27 On May 22, 2001, Petitioner filed a "Petition for Writ of Habeas
28 Corpus by a Person in State Custody" which was given Case No. CV 01-
04571-SVW (VBK). In this Petition, Petitioner raised the following
claims: (1) that Petitioner's sentence of 25 years to life for
commercial burglary constitutes cruel and unusual punishment. (See
Petition at 6.)

1 viewed in light of the evidence as a whole, would be
2 sufficient to establish by clear and convincing evidence
3 that, but for constitutional error, no reasonable factfinder
4 would have found the applicant guilty of the underlying
5 offense.

6 (3)(A) Before a second or successive application permitted
7 by this section is filed in the district court, the applicant
8 shall move in the appropriate court of appeals for an order
9 authorizing the district court to consider the application."

10
11 The Petition now pending constitutes a second and/or successive
12 petition challenging the same conviction as Petitioner's prior habeas
13 petition, within the meaning of 28 U.S.C. § 2244(b). Thus, it was
14 incumbent on Petitioner under § 2244(b)(3)(A) to secure an order from
15 the Ninth Circuit authorizing the District Court to consider the
16 Petition, prior to his filing of it in this Court. Petitioner's
17 failure to do so deprives the Court of subject matter jurisdiction.

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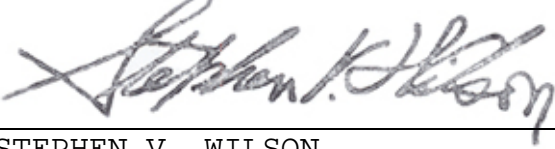
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28 For the foregoing reasons, **IT IS ORDERED** that this action be

1 summarily dismissed pursuant to Rule 4 of the Rules Governing Section
2 2254 cases in the United States District Court.

3 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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5 DATED: 4/27/11


STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

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8 Presented on
9 April 29, 2011 by:

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11 VICTOR B. KENTON
12 UNITED STATES MAGISTRATE JUDGE
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